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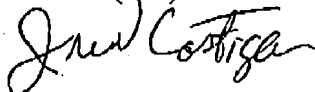
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Re: Serial No.: 09/224,781

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James V. Costigan, Reg. No. 25,669

July 2, 2007

**RECEIVED
CENTRAL FAX CENTER****JUL 02 2007**Docket No.: 1059-007IN THE UNITED STATES PATENT AND TRADEMARK
PATENT OPERATION

In re Application of:)
)
 Barry Libin) Group Art Unit: 1614
)
 Serial No.: 09/224,781) Examiner: Krass, Frederick
)
 Filed: January 4, 1999)
)
 For: METHOD OF PREVENTING AND TREATING MUCOSAL AND
 DERMAL CONDITIONS

New York, NY 10036
July 2, 2007Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450REPLY BRIEF

Sir:

This Reply Brief is being filed in response to the Examiner's Answer that was mailed May 2, 2007.

In response to Rejection No. 1., the applicant wishes to point out that the Examiner is arguing that the term "consisting essentially of" does not include nisin, a material which the prior art identifies as a material which has an effect on the composition. The '711 patent identifies nisin as having a biological effect in that it maintains the activity of triclosan. This is all the evidence that is required to establish that the presence of nisin has a material effect on claimed composition. To hold otherwise would mean that the elimination of an active component from a composition would not result in a novel composition, when the active component is known to have a material effect on the properties of the composition. In the case of In re Janakirama-Rao, 137 USPQ 893, (CCPA 1963) the composition was a glass composition and there was no evidence of the properties of the materials that were alleged to be excluded by the

language "consisting essentially of." That is not the case in the present appeal.


With regard to Rejection 2, the '099 patent assigned a biological function to urea, which was described as a "horny substance softening agent." This evidence is conclusive that there is a material effect that is imparted by urea. Under the rationale of In re Janakirama-Rao, id., the applicant's claims must be interpreted as excluding urea. The Examiner has given no reason why it would be obvious to exclude urea. If urea is excluded, the use of the composition is not limited to the foot or the palm and it may be used on mucus membranes such as the mouth. This is evidence of the material effect of urea in this composition.

The Examiner's comments, regarding Rejection 3 are in error because the '711 patent requires that nisin be present and this material is excluded from the claims for the reasons set forth in response to Rejection 1.

For these reasons and the reasons set forth in the Brief it is requested that the rejections of record be reversed.

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Respectfully submitted


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